Public Prosecutor v Mohd Azam bin Basiron and another trial

HIGH COURT (MUAR) — CRIMINAL TRIAL NO 45–5 OF 2002
JEFFREY TAN J
25 FEBRUARY 2004

Evidence — Corroboration — Accomplice evidence — Whether accomplice creditworthy — Whether corroboration required — Evidence Act 1950 ss 114(b), 133

The accused was charged under s 302 of the Penal Code for the murder of one Wee Ah Choon. Nineteen witnesses were summoned by the prosecution but it was only one witness (SP7) who gave a direct account of the alleged act at the stated time and place. SP7 had admitted to the full participation in the actual crime. The issue for consideration was whether the evidence of SP7 required corroboration.

Held, acquitting and discharging the accused:

(1) Corroboration refers to independent confirmation tending to connect the accused with the offence although it is not necessary that there should be independent confirmation of every material circumstance (see para 28).

(2) In the case of accomplice evidence the need for corroboration arises from the nature of a witness who is somebody who may have an interest in making out the guilt of another preference to his own. The evidence of an accomplice therefore must be received with the greatest possible caution as it is not unlikely that he would not give unfaithful evidence under the circumstances (see para 30).

(3) Whilst s 133 of the Evidence Act 1950 allows on the uncorroborated evidence of an accomplice, s 114 of the Evidence Act 1950 provides that the court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars (see para 20).

(4) An appellate court therefore will not allow a conviction obtained on the uncorroborated evidence of an accomplice to stand unless there is clearindication by the trial court that it was aware that there was no corroboration and that in spite of the absence of corroboration it was convinced of the truth of the accomplice's evidence that he felt safe in convicting the accused (see para 22).

(5) There were certain aspects of the testimony of SP7 that accused scepticism as well as suspicion. His story had holes and there was a total failure to adduce evidence to buttress and/or to support that story of SP7 o the several aspects that could be buttressed and/or supported (see para 35).

(6) There must be credible evidence sufficient to convict. It must be bornein mind that the entire case of the prosecution hangs on the story of a self-confessed hired killer. That story was not free from material

contradictions. That story was not entirely credible. Given that the two accused persons could face the death penalty, it would only be prudent to demand some independent evidence confirming in some material particular that the accused persons committed the crime (see para 36).

(7) Given the totality of the facts and circumstances of the case, it could not be said that this is one of those rare cases where it is safe to convict on the uncorroborated evidence of an accomplice (see para 36).

[**Bahasa Malaysia summary**

Tertuduh telah disabitkan di bawah s 302 Kanun Keseksaan kerana membunuh Wee Ah Choon. Sembilan belas saksi telah dipanggil oleh pihak pendakwaan tetapi hanya seorang saksi (SP7) telah memberikan keterangan langsung mengenai tindakan yang dikatakan pada masa dan tempat yang dinyatakan. SP7 telah mengaku telah terlibat sepenuhnya dalam jenayah sebenar. Persoalan untuk dipertimbangkan adalah sama ada keterangan SP7 memerlukan sokongan.

Diputuskan, membebas dan melepaskan tertuduh:

(1) Sokongan merujuk kepada pengesahan berasingan yang berhasrat untuk mengaitkan tertuduh dengan kesalahan tersebut walaupun ia tidak perlu wujud pengesahan berasingan untuk setiap keadaan material (lihat perenggan 28).

(2) Dalam kes keterangan rakan sejenayah, keperluan sokongan timbul daripada sifat seorang saksi yang merupakan seseorang yang mungkin mempunyai kepentingan dalam menentukan kebersalahan seorang lain selain beliau. Keterangan seorang rakan sejenayah oleh itu harus diterima dengan dengan penuh hati-hati kerana ia besar kemungkinan beliau tidak akan memberikan keterangan sebenar dalam keadaan sedemikian (lihat perenggan 30).

(3) Di mana s 133 Akta Keterangan 1950 membenarkan keterangan tidak disokong seorang rakan sejenayah, s 114 Akta Keterangan 1950 memperuntukkan bahawa mahkamah boleh mengandaikan seorang rakan sejenayah tidak boleh dipercayai kecuali beliau mempunyai sokongan dalam butir-butir tertentu (lihat perenggan 20).

(4) Mahkamah rayuan oleh itu tidak akan membenarkan suatu sabitan diperolehi berdasarkan keterangan yang tidak disokong seorang rakan sejenayah itu dikekalkan kecuali ia adalah jelas bahawa mahkamah perbicaraan sedar bahawa tidak terdapat sokongan dan bahawa meskipun ketiadaan sokongan, ia yakin dengan kebenaran keterangan rakan sejenayah sehingga beliau berasa selamat menyabitkan tertuduh (lihat perenggan 22).

(5) Terdapat beberapa aspek tertentu tentang keterangan SP7 yang tertuduh agak ragu-ragu dan was-was. Cerita beliau mempunyai lopang dan terdapat kegagalan untuk mengemukakan keterangan untuk memperkukuh dan/atau menyokong cerita SP7 tentang beberapa aspek yang boleh diperkuat dan/atau disokong (lihat perenggan 35).

(6) Semestinya terdapat keterangan yang boleh dipercayai yang mencukupi untuk membuat sabitan. Perlu diingatkan bahawa keseluruhan kes pendakwaan bergantung kepada cerita seorang pembunuh upahan yang telah membuat pengakuan sendiri. Cerita tersebut tidak bebas daripada percanggahan material. Cerita tersebut tidak secara keseluruhannya boleh dipercayai. Dengan andaian bahawa kedua-dua tertuduh boleh dihadapkan dengan hukuman mati, ia adalah bijak untuk menuntut keterangan berasingan yang mengesahkan butiran tertentu yang telah dilakukan oleh tertuduh tersebut dalam jenayah tersebut (lihat perenggan 36).

(7) Berdasarkan keseluruhan fakta dan keadaan kes, tidak boleh dikatakan bahawa ini merupakan salah satu daripada kes yang terperinci di mana ia adalah selamat untuk membuat sabitan berdasarkan keterangan tidak disokong seorang rakan sejenayah (lihat perenggan 36).]

Notes

For cases on evidence of accomplice, see 7(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 809–833.
For evidence of accomplice, see 12 *Halsbury's Laws of Malaysia* para [210.030].

Cases referred to

Attan bin Abdul Gani v PP [1970] 2 MLJ 143 (refd)
Aziz bin Muhamad Din v PP [1996] 5 MLJ 473 (refd)
Din v PP [1964] MLJ 300 (refd)
Gurdev Singh a/l Tejwant Singh v PP [1999] MLJU 718 (refd)
Hainie bin Hamid v PP [2003] 2 MLJ 403 (refd)
Lim Guan Eng v PP [1998] *3* MLJ 14 (refd)
Mohammad Sejeli bin Suhai v PP [1999] MLJU 155 (refd)
Ng Kok Lian & Anor v PP [1983] 2 MLJ 379 (refd)
Ng Yiu Kwok and Ors v PP [1989] 3 MLJ 166 (refd)
PP v Haji Ismail & Anor [1940] 1 MLJ 76 (refd)
Rex v Ambler [1938] 2 WWR 225 (refd)
Syed Abu Bakar bin Ahmad v PP [1984] 2 MLJ 19 (refd)
Tengku Mahmood v PP [1974] 1 MLJ 110 (refd)
Thong Hong Kee v PP [1952] MLJ 110 (refd)
Trowell v PP [1946] MLJ 41 (refd)
Yap Ee Kong & Anor v PP [1981] 1 MLJ 144 (refd)

Legislation referred to

Evidence Act 1950 s 114, 132, 133

Vimala Arunasalarn (Haslinda bte Abu Bakar with her) (Attorney-General's Chambers) for the prosecution.
Harjit Singh Nijar (Nijar & Nijar) for the first accused.
Hisham Teh Poh Teik (Teh Poh Teik) for the second accused.

Jeffrey Tan J:

[1] The charge against the accused, Mohd Azam bin Basiron ('OKT1'), and Dr Mohd Aszeri bin Kasim ('OKT2') reads as follows:

Bahawa kamu bersama-sama Haris Fadzilah bin Buhari K/P 730903-01-5217 (sudah meninggal dunia pada 19.6.2001) pada 18.05.2001 diantara jam 1.00 pagi hingga 5.00 pagi di Poliklinik Ehsan No 58-1, Jalari Sulaiman, dalam daerah Muar, dalam Negeri Johor telah melakukan satu kesalahan bunuh hingga menyebabkan kematian seorang lelaki Cina bernama Wee Ah Choon K/P 710731-01-5879, oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 302 Kanun Keseksaan dan dibaca bersama-sama di bawah s 34 Kanun yang sama.

[2] Nineteen witnesses were summoned by the prosecution to prove that charge. But it would be fair to say that only one witness gave a direct account of the alleged act of homicide at the stated time and place. That witness was Rahmat bin Salleh ('SP7') who admitted to full participation in the actual crime. SP7 testified to the following. He was a debt collector for Syarikat Ong Cheng Teck Licensed Moneylender of Muar. OKT2, the doctor of Klinik Ehsan ('the clinic') of Jalan Sulaiman, Muar, was indebted in the sum of RM40,000. Each night between 11pm and 12 midnight, beginning from 2000, he would collect a loan repayment of RM100 from OKT2 at the clinic. OKT1 was an employee of the clinic. The other employees of the clinic were Siti Khatijah bte Jamaluddin, Siti Hajar bte Afandi ('SP13'), and Suhaimi bin Hassan. There were times when he collected the loan repayments from OKT1. '*OKT2 ada mengadu masalah hutang kepada sayd*. OKT2 told him that he (OKT2) was also indebted to Wee Ah Choon who was also called 'Azman', and that the clinic was the property of Azman by reason of his inability to repay Azman. '*OKT2 ada minta tolong saya untuk hapuskan Azman. OKT2 minta saya bunuh Azman. Itulah maksud hapuskan. OKT2 minta bantuan saya seminggu sebelum kejadian ini*'. He said to OKT2 that he (SP7) would think it over. OKT2 made the same request to him for a week.

[3] At that stage of the examination-in-chief of SP7, the learned Deputy Public Prosecutor, Vimala Arunasalam) ('DPP') applied to the court to explain the provisions of s 132 of the Evidence Act 1950 to SP7. The court then read and explained the purport of the said s 132 to SP7. Thereafter, SP7 testified to the following. *'Saya bersetuju [memberi bantuan].*' Pressed by the learned DPP to specify the assistance, SP7 said 'saya *pegang simati, di Klinik Ehsan, pada 18, bulan tak ingat, tahun tak ingat, pukul 12 tengah ma/am*.' Pressed further by the learned DPP to elaborate on the events on the night in question, SP7 testified that he went to the clinic to collect the loan repayment. OKT2 and the deceased were in the reading room. Both were seated and engaged in conversation, when he entered the reading room. They were the only persons in the reading room. *'Saya terus pergi ke Azman, saya memegang bahu Azman, saya pegang kedua bahu. Kemudian OKT1 masuk dan terus ketuk kepala Azman … dengan kayu … Semasa saya masuk ke bilik bacaan, OKT1 ikut belakang. Lepas diketuk, Azman terus terlintuk, pengsan. OKT1 pukul dua kali. Saya terus keluar, Semasa saya pegang Azman, OKT2 duduk berdepan … Bahagian kanan kepala si mati dipukul*.' He left the reading room and sat in the waiting room. *'Kemudian OKT2 arahkan tiga pekerja keluar beli makanan. Mereka ketiga ada keluar pergi beli makanan. Selepas itu OKT2 masuk balik ke belakang, ke bilik bacaan*.' Then Haris Fadzilah arrived at the clinic. *'OKT2 memperkenalkan Haris kepada saya … Saya tidak kenal Haris sebelum kejadian … Haris terus masuk ke bilik bacaan … beberapa minit Haris keluar dalam keadaan tergesa-gesa dari*

bilik bacaan … Lepas itu Haris keluar ke pintu hadapan klinik [dan] alihkan motorsikal di luar klinik.' He helped Haris who was not strong to re-position the motorcycle. Then Haris rode that motorcycle towards the direction of Jalan Sulaiman, Muar. That motorcycle (later identified by SP7 as motor scooter JGB 5288) was the motorcycle used by the deceased. He entered the clinic and sat in the waiting room. Then Siti Khatijah, SP13, and Suhaimi returned to the clinic. OKT2 came out from the reading room and asked Siti Khatijah, SP13, and Suhaimi to go home:. OKT2 said to Siti Khatijah, SP13, and Suhaimi '*ada hal keluarga dan dia hendak tutup klinik dengan cepat. Dia orang pun balik*.' OKT2 re-entered the reading room. OKT1 then came out from the reading room and walked to the reception counter. OKT1 wrote and stuck a notice *'Untuk Jualan Ubat Sahaja'* on the clinic's notice board. OKT1 re-entered the reading room. A few minutes later, Haris returned in a red car (later identified by SP7 as car BCE 8313). Haris immediately entered the reading room. OKT2 came out from the reading room. From a pouch bag, OKT2 took out RM1,000 and two cheques, each for RM500, and gave them to him '*sebagai upah to/ong dia untuk membunuh Azman*'. OKT2 wanted to give a mobile phone to him, but he declined the offer. OKT2 re-entered the reading room. OKT1 came out from the reading room. OKT1 pushed a wheelchair to the reading room. He was still seated in the waiting room. Then OKT2 came out from the reading room and asked him (SP7) '*untuk menolong dia. Saya ada pergi ke belakang. Semasa saya tolak pintu … saya nampak Haris sedang menyimpul wayar di leher Azman. Selepas itu saya hendak lari keluar. OKT2 tangkap tangan saya dan suruh saya jangan lari. Saya tunggu di situ, di bilik bacaan.*' As he pushed open the door to the back portion of the clinic, he saw that Haris, OKT1, OKT2, and Azman were in the kitchen. The deceased, who was *terlintuk,* was in a wheelchair. Haris and both accused helped to push the wheelchair to the front of the clinic. He held the middle door ajar to allow the wheelchair to pass through. Then he held the front door ajar to allow Haris and both accused to push the wheelchair outside the clinic, to the red car that Haris had arrived in, Haris got onto the driver's seat. OKT1 opened the back door and got into the car. At the same time, he and OKT2 lifted Azman onto the rear seat of the car. Then Haris drove off, towards the direction of Jalan Maharani, Muar, together with OKT1. He believed that the deceased who was motionless was already dead. '*Saya nampak Azman ada memakai baju sejuk*.' As he lifted Azman into the car, he saw blood on the clothes and on the right side of the head of Azman. After Haris and OKT1 had driven off and the wheelchair had been pushed back into the clinic, OKT2 said to him '*puas hati aku*'. He then departed for home.

[4] SP7 further related that the murder plan was revealed on the night of 17 May 2001. On that night in the reading room, OKT2 said to him, OKT1 and Haris, that he (SP7) would hold onto the deceased, that OKT1 would strike the head of the deceased with a piece of wood that OKT1 would bring from his (OKT1) house, and that Haris would dispose the body. OKT2 said he would provide the wire. '*Semasa itu OKT1, OKT2, Haris dan saya berada*'. '*OKT2 ada tunjuk wayar hijau, Wayar adalah untuk jerut Azman. OKT2 tidak kata siapa yang akan jerut Azman. OKT2 ada kata buang Azman di Genting*'. He asked the reason for the disposal of the body at Genting. Haris said that

the deceased frequented the casino '*dan nanti orang ingat dia kena rompak*'. He cashed one of the two cheques, but not the other cheque, as OKT2 informed him about four days after the incident, that the second cheque could not be cashed and that the police were monitoring the clinic. He threw away the second cheque. On the night of 17 May 2001, OKT2 promised to pay RM200,000 to him. '*Saya percaya janji ini*'. Other than the initial RM1,000 and two cheques, he was not paid the RM200,000. About four days after the incident, he asked for that payment. OKT2 asked him to be patient. He had no knowledge of the whereabouts of the wood and wire (P24) after they were used to strike and strangle the deceased.

[5] Mr Hisham Teh PohTeik for OKT2 had the consent of the learned DPP and counsel for OKT1 to first cross-examine SP7. And under Mr The's examination, SP7 testified to the following. He was arrested on 7 July 2001, that is, before OKT2 was arrested. He was released on 19 February 2002. After his release, the police did not record his statement, and the police did not ask him to be a witness. He only got to know that he would be a witness when he was subpoenaed. In 1999, he did not know the deceased. He met the deceased from time to time at the clinic. From OKT2 he got to know that the deceased was a debt collector. A notice *'Untuk Jual Ubat Sahaja'* was posted; the clinic was not closed. The lights in the clinic were not switched off. The lights in the dispensary were switched on. The lights in the waiting room were switched off. He did not wear a watch, but he would have left the clinic at about past 3am. '*Tinggal OKT2 sahaja*'. SP7 denied that his testimony was fabrication. Suhaimi was not in the clinic between 12 midnight and 6am. SP7 disagreed with counsel who suggested that the deceased was still alive in the afternoon of 18 May 2001, and that OKT2 and wife met the deceased in the afternoon of 18 May 2001. SP7 said he was not aware that a *locum tenens,* one Dr Zakaria bin Omar, was on duty in the clinic at the material time. SP7 disagreed with counsel who variously suggested that patients called at the clinic at the material time, that patients called at the clinic at 1.52am, at 3.09am, and at 4.10am, that OKT2 was never in the clinic between 12am and 6am on 18 May 2001, that Dr. Zakaria was the doctor in the clinic at the material time, that there was no such payment of RM1,000, and that the two cheques were interest payments to Syarikat Ong Cheng Teck. SP7 said he could not remember whether the cheque ho cashed was dated 29 May 2001. SP7 disagreed that he was told not to cash the second cheque because of insufficient funds. SP7 said he could not remember whether the second cheque was dated 8 June 2001. SP7 disagreed that the said cheques were given to him a few days before 18 May 2001. SP7 disagreed with counsel who suggested that Siti Khatijah and SP13 '*pulang pada 12.30am*' at the end of their duty hours.

[6] Under examination by Mr Harjit Singh Nijar for OKT1, SP7 testified to the following. His release was not on the basis that he would testify in court. Two days after his arrest, he gave his statement to the police. SP7 disagreed with counsel who suggested that it was eight days after his arrest that he gave his statement to the police. He gave his statement to one ASP Che ... '*Azman datang ke klinik dengan memakai baju sejuk, yang dizip sehingga leher*'. He held

both shoulders of the deceased. The deceased resisted. No one held the hands of the deceased. SP7 disagreed with counsel who suggested that with hands free it would have been easy for the deceased to free himself. He held on tightly to the shoulders of the deceased who could not therefore move. SP7 disagreed with counsel who suggested that his testimony was unbelievable and entirely made up. The head of the deceased was struck on the right side, on the top of the skull. SP7 disagreed with counsel who suggested that OKT1 had not struck the deceased. SP7 disagreed with counsel who suggested that the clinic was open until 6am on 18 May 2001. SP7 agreed that the '*baju sejuk*' was not on the body of the deceased in photographs [P44 (5 & 6)] of the body, but SP7 disagreed that his story of a '*baju sejuk*' was fiction. SP7 disagreed with counsel who suggested that OKT1 was not at all involved in the homicide and disposal of the body.

[7] Under re-examination, SP7 testified that he departed from the clinic at about 3am, that the clinic was not closed '*tetapi hanya untuk untuk menjual ubat sahaja*', and that no patients had entered the clinic throughout the duration that he was there.

[8] Siti Hajar bte Afandi and 'Dr' Zakaria bin Omar were amongst the 18 witnesses summoned by the prosecution. Siti Hajar (SP13) testified to the following. In February 2001, she was employed by the clinic. She was a part time employee of the clinic. '*Setiap malam saya bekerja*'. Her hours of work were from 9pm to 12.30 midnight. Her colleagues at the clinic were Siti Khatijah and Suhaimi, who like her were also general workers of the clinic. The owner and doctor of the clinic was OKT2. At the pharmacy where she worked, she got to know the deceased, who was a regular customer. The deceased purchased medicine for the clinic. It was the deceased who offered employment to her at the clinic. It was the deceased who secured her position at the clinic. The deceased paid her salary for her work at the clinic. Between 9pm and 12.30 am, there was another doctor, one Dr Zakaria bin Omar, in the clinic. To the best of her knowledge, Dr Zakaria was a medical doctor, as Dr Zakaria acted as a doctor. By and large, during her hours at the clinic, the doctor on duty was OKT2. If OKT2 were not at the clinic, Dr Zakaria would stand in. Amongst her other duties, she had to record the personal particulars of patients on individual patient cards, and to record the time and date of the visitation. Each night, the deceased would come to the clinic, and take cash from the drawer. OKT1 was also a regular at the clinic. OKT1 was like an employee of the clinic. Sometimes, OKT1 would help out with the chores of the clinic, like dispensing medicine to patients. The deceased would come to the clinic, on a motorcycle. A few days after the event, she got to know that the deceased had been murdered. SP7 was a debt collector. SP7 been to the clinic to collect loan repayments from the brother of OKT7. She could not remember if she were working at the clime on the night of 17 May 2001. She could not remember the last, occasion she saw the deceased. SP13 was not examined by Mr Harjit.

[9] Under examination by Mr Teh, SP13 identified ID40 as the clinic's patient register, and ID53 as patient cards of the clinic. SP13 affirmed that the personal particulars of the patient, in patient card ID53B, were recorded by her, and that the time 12.07am and date 18 May 2001 in ID53B and that

the time 11.53pm in ID53A were also recorded by her. SP13 further related that Dr Zakaria was only in the clinic on occasions. SP13 identified the personal particulars of the patient in ID53A as the handwriting of OKT2, but she could not identify the handwriting of the medical notes in ID53C for 18May 2001, and the handwriting of the medical notes in ID53D and ID53E.

[10] Under re-examination, SP13 again affirmed that the personal particulars of the patient in ID53B, and the time of 12.07am and date of 18 May 2001 in ID53B were all recorded by her. In the clinic's patient register (ID40) for the 18 May 2001, she recorded the names of the patients from numbers 1 to 25 before she ended her duty at 12.30am. The other patients on 18 May 2001 were recorded by Suhaimi.

[11] The next witness (SP14) was Zakaria bin Hassan, who most shockingly turned out to be a charlatan and a fake doctor. SP14 testified that he retired in 2003 as a medical assistant of the Medical Department, Muar. Before that, he worked part time in Klinik Ehsan, standing in for the doctor and examining patients. The provisions of s 132 of the Evidence Act 1950 was also road and explained to SPH. Thereafter, SP14 testified '*Saya bekerja sebagai pengganti doktor di Klinik Ehsan sejak Januari 2001 sehingga si mati hilang*'. The deceased suggested to him to work in the clinic, as a doctor. '*Saya setuju kerja*'. The deceased was a debt collector. The clinic belonged to OKT2. The deceased paid his wages for work at the clinic. His hours in the clinic were not fixed, but were after normal office hours. Each time, it was the deceased who would summon him to the clinic. He worked four times a week at the clinic, between 6pm and 10pm, or between 8pm and 12pm, or between 8pm to 2am, or between 6pm to 8pm. Whilst he was on duty at the clinic, there were no [other] doctors around. '*Saya masuk dan OKT2 keluar dari Klinik Ehsan*'. He was paid a daily wage of between RM50 and RM100. SP13, Siti Khatijah, and Suhaimi were employees of the clinic. OKT1 also worked in the clinic. He believed that OKT2 knew he was working in the clinic. The deceased paid his wages from the money in the drawer at the reception counter. He was not sure if the deceased took the money from that drawer. To the best of his knowledge, the deceased was a good friend of OKT2. Sometime in 2001, from newspapers, he got to know of the death of the deceased. He frequently met up with the deceased at the clinic. It was OKT1 who informed him that the deceased could not be reached. He made no attempt to contact the deceased, as it was usually the deceased who would contact him. The deceased had not telephoned him when OKT1 informed him that the deceased could not be reached. After he learned of the death of the deceased, he ceased work at the clinic. He did not know SP7. The time 11.53pm and the date 18 May 2001 in ID53A were not recorded by him. The medical notes on the back page of ID53A were written by him. With a yellow marker pen, SP14 then marked out his medical notes in five patient cards (P53AA to P53EE), The time and date of visitation in the patient: cards were recorded at the reception counter. OKT1 was in charge of the recording of the patients' personal particulars. At times, SP13, Siti Khatijah or Suhaimi would record the patient's personal particulars The deceased '*suruh saya kerja di klinik dan bayar kerja. Selain itu saya tak tahu, tetapi si mati selalu keluar masuk di [klinik]*'. The deceased had a motor scooter. SP14 was not examined by Mr Harjit.

[12] Under examination by Mr Teh, SP14 agreed that he could not remember whether he had the mobile phone number of the deceased. With a yellow marker pen, SP14 then highlighted his medical notes on copies of ten patient cards [054(1-10)]. SP14 agreed with counsel who suggested that he was in the clinic between 6pm and 8pm on 17 May 2001. But SP14 would not agree with counsel who suggested that he was in the clinic between 12.30am and 6am on 18 May 2001. SP14 said '*Ada bekerja, tetapi masa tak pasti*'.

[13] Under re-examination, SP14 agreed that without being shown the patient cards he could not remember if he were at the clinic on the night of 17 May 2001 and in the morning of 18 May 2001. SP14 said that he agreed with counsel that he was in the clinic between 6pm and 8pm on 17 May 2001, on the basis of the time and date recorded in the patient cards. SP14 again affirmed that at sometime in the morning of 18 May 2001, he was on duty at the clinic.

[14] The testimony of SP9 and SP18 should also be specially mentioned. SP9, (Dr N Chantiran a/l Nathan) a government doctor at the material time, testified that he performed the post mortem on the deceased on 22 May 2001 at the Kuala Kubu Baru District Hospital. The body was in a moderate state of decomposition. The body was bloated from decomposition changes. There were signs of insect activity. Small size maggots had infested the left eye, the mouth and the nostrils. The external genitalia were swollen. There was a thin green insulated wire tied with a running knot around the neck. Beneath the green wire was a grove mark that completely encircled the neck. There was an incised wound (5cm long) on the right parietal area of the head. The margins and edges of the wound were sharp, exposing the underlining skull bone. There was a bruise (4 x 3cm) over the right occipital region. The skull and meninges were intact, but the brain matter had decomposed into liquid form. The tongue was sticking out of the mouth. There were teeth marks at the tip of the tongue. It was because the tongue was clenched between the teeth. The neck muscles showed decomposition changes. There was a fracture of the hyoid bone (the bone between the Adam's apple and the chin). The rib cage was intact. The pleural cavities had minimal decomposition fluids, The lungs were shrunken and showed decomposition changes. The abdomen had minimal decomposition fluids. The cause of death was compression of the neck. That green insulated wire could cause the compression of the neck, by constriction, A sharp weapon could cause the scalp injuries. SP9 could not say if a piece of wood with a sharp edge could cause the scalp injuries. SP9 could not specify the time of death. SP18 (Dr Karim bin Tajudin, Head of the Pathology Department, Hospital Klang), who said he had performed about 20,000 autopsies and who made out that he was clearly a government pathologist of eminence, was then summoned by the prosecution to fill that gap. And after the transcript of the post mortem findings of SP9 were read to him, SP18 opined that death would have occurred more than two days, closer to three days, before the body was discovered and or brought to the mortuary.

[15] The testimony of the other 14 prosecution witnesses (other than 5PJ7 and SP19) had to do with the discovery of the body of the deceased and the events thereafter, and may be summarized as follows. At 5.20pm on 20 May 2001,

a report (P48) was lodged at the Goh Tong Jaya Police Station by one Yok Dok bin Yok Tep, that a corpse was lying in a drain at the 12km Batang Kali to Goh Tong Jaya Road, Ulu Selangor, Selangor. Meanwhile, at 1.05pm on 20 May 2001, a report (P58) was lodged at the Muar Police Station by the wife (SP17) of the deceased, that the deceased had not returned home. At 6.40pm on 20 May 2001, two police officers (SP3, SP5) located a corpse lying in a shallow but dry drain at the 12.5km, Jalan Batang Kali to Goh Tong Jaya Road. The corpse was wrapped in a large silver coloured plastic sheet, below the neck. A green insulated wire (P24A) was tied around the neck of the corpse. On 21 May 2001, the police issued a press release requesting the public to identify the corpse. On 22 May 2001, at the Kuala Kubu Baru Hospital mortuary, SP17 identified the corpse as that of her [late] husband. On 22 May 2001, SP9 conducted the post mortem. Blood [P26A(2)] and hair samples [(P26A(1)] were taken from the corpse of the deceased. On 24 May 2001, the police recovered JGB 5288 from 406, Jalan Merpati, Kg Kenangan, Muar, from one Hair Anuar bin Buhari. JGB 5228 was registered in the name of Haris. On 24 May 2001, the police arrested OKT1 at the clinic. On 25 May 2001, Hans was arrested in Muar. On 7 June 2001, OKT1 and Haris were released. Haris passed away on 19 June 2001. On 11 July 2001, Hair Anuar bin Buhari was arrested at the Machap Toll Plaza, Johore. On 12 July 2001, the police took possession of BCE 8313 parked in front of 406, Jalan Merpati, Kg Kenangan, Muar. BCE 8313 was registered in the name of the father of Haris. On 16 July 2001, Hair Anuar was released. On 18 July 2001, the police examined and recovered strands of human hair (P6B, P7B, P8B, P9B and P10B) from BCE 8313; the police cut and removed the parts of the carpet (P11A and P12A) that had stains. On 19 July 2001, the police examined and detected bloodstains in the reading room and in the computer room of the clinic, those bloodstains (P15A, P16A, P17A, P18A, P19A, P2QA and P21A) were; swabbed for analysis. On 19 July 2001, the police arrested OKT2 and Suhaimi at the clinic. On 25 July 2001, the police searched but failed to find any evidence at a rubbish dump. Thereupon, the police proceeded to the clinic and took possession of the patient register. On 9 August 2001, at the Muar Hospital, the investigation officer (SP15) obtained blood samples from SP17 and child (Wee Siew Fong). On 28 July 2001, the police re-arrested OKT1 in Kuantan. On 24 September 2001, the Chemistry Department, Petaling Jaya, released its findings (P56) to the police. On 9 October 2001, the Chemistry Department released its findings (P55) with respect to another set of exhibits, to the police. Those findings (two chemist reports) were served on both accused on 13 November 2003, and admitted in evidence.

[16] It should be pointed out that: (1) under examination by the defence, SP15 said that it was his investigative finding that SP7 was involved in the crime, that the clinic was open between 12 midnight and 6am on 18 May 2001; (2) the defence of alibi was put to the pertinent prosecution witnesses by counsel for OKT2 who proposed to those witnesses that the deceased was alive and met up with OKT2 and wife in the afternoon of 18 May 2001; and, (3) under re-examination, SP15 said that the wife of OKT2 said nothing about meeting up with the deceased, in her statement to the police.

[17] It should also be expressly pointed out that the findings of the Chemistry Department were that: (1) the strands of hair recovered from BCE 8313 belonged to three different individuals; (2) the carpet cuttings were devoid of blood; (3) the blood swabbed from the clinic could not have been from the biological father of Wee Siew Fong; and (4) the green insulated wire (P24A) around the neck of the deceased was different from the wires taken from the clinic. There was no comparison of the strands of hairs recovered from BCE 8313 with the hair sample taken from the corpse.

[18] The narrative of the prosecution was completed by SP17 and SP19. SP17 testified that her husband, the deceased, was a debt collector, but whether as an employee or boss and or for what duration she said she was not sure. She could not remember the date she last saw the deceased alive. She lodged a police report (P58) when she realized that the deceased was missing, She became worried when the deceased did not return home, as the deceased would return home each day without fail. The deceased did not have fixed working hours. Between 6pm and 7pm, the deceased would return home. If the deceased were out at work at night, he would return home between 5am and 6am. The deceased used JGB 5288. She could not say if the deceased had to collect debts outside the district of Muar. Each night the deceased would return home. When she lodged her missing person report, she was not sure of the number of nights that the deceased had not returned home. The deceased informed her that OKT1 and OKT2 were indebted to him. Haris helped the deceased to record the loans. The record of loans was not kept in the house. The deceased was riding off on JGB 5288 when she last saw him.

[19] SP19 testified that in 2001 he was the manager of one Syarikat Wan Teck Lee Enterprise (WTL) of Muar. Money lending was the business of WTL. Between 1999 and 2000, the deceased worked for WTL as a loan agent. Thereafter, the deceased set up his own money lending business. The deceased was his good friend. They kept in constant touch. The deceased frequented his office. The deceased had a motor scooter (JGB 5288). The deceased maintained a record of loans given out, in a small 555 booklet. He had perused that booklet. About six months before his demise, the deceased informed him that OKT2 was his biggest debtor. He had perused the deceased's record of OKT2's loan account. From what he saw, the daily repayment was about RM200 or RM210 for a period of six years. He made a calculation and found that the debt was substantial, about RM400,000. The deceased was aware that the debt of OKT2 was that substantial. At that point in time, OKT2 was also indebted to WTL. OKT2 had taken four or five loans, of sums between RM5,000 and RM30,000, from WTL. Initially, OKT2 repaid his loans by way of cheque payments. But when his cheques were dishonoured, WTL dispatched debt collectors to collect the repayments on a daily basis. At that point in time when he perused the deceased's record of OKT2's loan account, WTL was collecting a daily repayment of RM400 to RM500 from OKT2, towards the repayment of a loan of about RM30,000. He had been to the clinic, but always with the deceased. At the clinic, the deceased behaved as if he were the proprietor. From employees of the clinic, the deceased would enquire as to the daily takings. The deceased would sit behind the reception counter and count the daily

takings. The deceased had the run of the place ('*Si mati juga bebas keluar masuk dalam klinik*'). '*Si mati buat apa yang dia suka, termasuk arah tutup pintu*'.

[20] It should be evident that SP7's testimony that OKT2 instructed and OKT1 participated in the killing of the deceased, if it were to be believed, could convict both accused. After all, it is a general rule that an accused could be convicted on just one piece of direct evidence from a single credible witness (*Mohammad Sejeli bin Suhai v Prosecutor* [1999] MLJU 155). Corroboration is required however as a matter of practice in certain types of cases (*Aziz bin Muhamad Din v Public Prosecutor* [1996] 5 MLJ 473). Section 114 of the Evidence Act 1950 provides that 'The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case'. One allowable presumption is 'that an accomplice is unworthy of credit unless he is corroborated in material particulars'. And it should also be evident that SP7 was *particep criminis*. That fact was confirmed by SP7 himself by confessing to participation. But there should not be an automatic application of s 114(b). That was made patently clear in *Public Prosecutor v Haji Ismail & Anor* [1940] 1 MLJ 76, where Cussen J said as follows (at p 79):

> There is no question of the mechanical application of any general rule of presumption. When it is a question of this particular presumption, the credibility of the witness who is in the position of an accomplice must be individually judged just as any other witness, the same considerations being applied, with the added one that he is an accomplice. The Court must consider who and what he is, his demeanour bearing, the manner and quality and substance of his evidence in itself and in relation to all the circumstances of the case. The nature, quality and degree of his complicity must be examined. Then finally the Court must form its opinion whether he is to be given credit and his evidence accepted without corroboration or not.
>
> He is a competent witness and as such is entitled to have his credibility judged in itself; his evidence must be weighed and examined and not put aside unjudged and unconsidered because he is an accomplice.

[21] That the evidence of an accomplice must be examined was said again by the Federal Court, in *Ng Kok Lian & Anor v Public Prosecutor* [1983] 2 MLJ 379, where *Public Prosecutor v Haji Ismail & Anor* was cited with approval.

[22] The court could act on the uncorroborated evidence of an accomplice, for that is the clear purport of s 133 of the Evidence Act 1950 which provides 'An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice'. 'An appellate court, will not allow a conviction obtained on the uncorroborated evidence of an accomplice to stand unless there is clear indication by the trial court that it was aware that there was no corroboration and that in spite of the absence of corroboration it was convinced of the truth of the accomplice' evidence that he felt safe in convicting the accused' (*Gurdev Singh a/l Tejwant Singh v Public Prosecutor* [1999] MLJU 718). But it would appear that a mere warning of the danger of convicting on the uncorroborated evidence of an accomplice might not be enough to sustain a conviction.

[23] In *Yap Ee Kong & Anor v Public Prosecutor* [1981] 1 MLJ 144, the Federal Court, per Raja Azlan Shah CJ (Malaya), as His Royal Highness then was, said (at p 145):

> It is trite law that although an accomplice is a competent witness a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. All leading authorities have stated in clear terms that it has long been a rule of practice or rule of prudence which has become virtually equivalent to a rule of law for the judge or jury to be warned of the danger of convicting on the uncorroborated testimony of an accomplice. It is a matter of prudence except where circumstances make it safe to dispense with it that there must be corroboration of the evidence of an accomplice. In the much quoted case of *R v Baskerville* [1916] 2 KB 658 Lord Reading CJ speaking of the rule of practice accepted 'as virtually equivalent to a rule of law' requiring corroboration in this type of cases said:
>
> > 'If after the proper caution by the judge the jury nevertheless convict the prisoners, this court will not quash the conviction merely on the ground that the accomplice's testimony was uncorroborated ... In considering whether or not the conviction should stand, this court will review all the facts of the case, and will bear in mind that, the jury had the opportunity of hearing and seeing the witnesses when giving their testimony. But this court, in the exercise of its powers will quash a conviction even when the judge has given to the jury the warning or advice above mentioned if this court, *after considering all the circumstances of the case, thinks the verdict unreasonable or that it cannot be supported having regard to the evidence*.' (Emphasis added.)

[24] In *Syed Abu Bakar bin Ahmad v PP* [1984] 2 MLJ 19, the Federal Court held (at p 25):

> In our view the law is clear in that:
>
> > 'Whilst it is established principle that it is not illegal to act on the uncorroborated evidence of an accomplice, it is a rule of prudence so universally followed as to amount to almost a rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused ...' *Bhuboni Sahu v The King* (1949) 76 IA 147, AIR 1949 PC 257 (See also *Davies v Director of Public Prosecutions* [1954] 1 All ER 507).'

[25] And in *Hainie bin Hamid v Public Prosecutor* [2003] 2 MLJ 403, the Court of Appeal per Mohd Noor Ahmad JCA, as he then was, said as follows (at p 407):

> Therefore, in view of the borderline nature of the evidence relating to the exception and having regard to the fact that the conviction for murder was based on the uncorroborated evidence of the accomplices, to our mind it would not be safe to allow the murder conviction to stand.

[26] The clear implication of the latter two authorities is that it could not be safe to convict on the uncorroborated evidence of an accomplice.

[27] What amounts to 'corroboration'? Sharma J in the case of *Attan bin Abdul Gani v Public Prosecutor* [1970] 2 MLJ 143 laid out the law on corroboration as follows (at p 146):

> The law as to corroboration as enunciated by the various authorities may be summarized thus:

'It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent, the rules are clear:

(1) It is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.

(2) The independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime.

(3) The corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another.

(4) The corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.

(5) Corroboration must be in material particulars hut it is not necessary that the whole prosecution story or all material particulars should be corroborated.

(6) Corroborative evidence required for accepting the testimony of an accomplice need not by itself conclusively establish the guilt of the accused. It is sufficient if it is a piece of circumstantial evidence which tends to connect the accused with the crime with which he is charged.

(7) Though a trap-witness is not an approver, he is certainly an interested witness in the sense that he is interested to see that the trap laid by him succeeded. He could at least be equated with a partisan witness and it would not be admissible to rely upon his evidence without corroboration. His evidence is not a tainted one; it would only make a difference in the degree of corroboration required rather than the necessity for it.

(8) Corroboration evidence need not be by direct evidence. It may be by circumstantial evidence in which case the rule relating to proof from circumstantial evidence would apply and the circumstance must be consistent with the innocence of the accused against whom the circumstance if offered as evidence.

(9) There must be corroboration in one or more material particulars but that does not mean in every particular or detail. Corroboration, as the grammatical meaning of the word itself implies, means only support, or in other words, an assurance of truth which is lent to the evidence of the accomplice or the complainant by other evidence. It does not mean that the whole evidence given by the accomplice (or complainant) must be repeated wholly or in parts by witnesses other than the accomplice (or the complainant).

(10) The minimum corroboration which the law ordinarily requires of the evidence of an accomplice is evidence of at least one material fact, pointing to the guilt of the accused person. The weight of such corroborative evidence which is necessary, depends on the particular facts and circumstances of the case.'

[28] In *Yap Ee Kong & Anor v Public Prosecutor* at p 146, Raja Azlan ShahCJ (Malaya), as His Royal Highness then was, he was then, said:

The rules are lucidly expounded by Lord Reading in *Baskerville's* case [1916] 2 KB 658. The rules may be formulated as follows:

(1) There should be some independent confirmation tending to connect the accused with the offence although it is not necessary that there should be independent confirmation of every material circumstance;

(2) The independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice; and

(3) The corroboration must come from independent sources, thus bringing out the rule that ordinarily the testimony of an accomplice would not be sufficient to corroborate that of another.

[29] More recently, the Court of Appeal, in *Lim Guan Eng v Public Prosecutor* [1998] 3 MLJ 14, had the opportunity to put it as follows:

So far as the law governing corroboration is concerned, we accept the following propositions to be well settled and beyond controversy:

(1) As a general rule, the conviction of an accused may proceed upon the uncorroborated evidence of one witness.

(2) There are cases where either common law — as a matter of practice which has, through passage of time, acquired the force of law — or statute, creates an exception to the general rule in respect of certain categories of witnesses by calling for, or indeed demanding, that their evidence may not to be acted *upon in* the absence of independent corroboration. Accomplices illustrate the common law exception, while s 6(1) illustrates the statutory exception,

(3) Evidence that requires corroboration, whether as a matter of practice having the force of law or by direction of statute: (a) must first be capable of belief before any question of corroboration may arise, for evidence that fa Us of its own inanition cannot be saved by the presence of abundant corroboration; (b) cannot corroborate itself, for tainted evidence does not remove its taint by repetition, notwithstanding s 157 of the Evidence Act 1950; and (c) cannot be corroborated by evidence that itself requires corroboration.

(4) To constitute true corroboration in the eyes of the law, the corroborative evidence must: (a) be capable of belief; (b) be independent in the sense mentioned in proposition (3)(c) above; (c) be in respect of the fact or facts that lie at the axis of the dispute, that is to say, upon the fact in issue and not upon some collateral matter or upon a fact in respect of which there is no quarrel. In other words, it must be corroboration upon a material particular but need not be identically repetitive of the evidence that *requires* corroboration.

(5) At common law, a trial court is entitled to act upon uncorroborated evidence which in itself requires corroboration provided that it warns itself of the danger of so acting. The warning must not amount to mere lip-service. Good reasons must be furnished for departing from this accepted rule. Departure from the normal rule may be justified where the evidence requiring corroboration emanates from a 'witness who is a person of high character and the offence is one that does not carry with it any serious moral stigma.

The authorities that support these propositions are *Legion and Delude K v Baskerville* [1916] 2 KB 658, *Chao Chong v PP* [1960] MLJ 238, *Teng Ser Siong v PP* [1963] MLJ 265, *TN Nathan v PP* [1978] 1 MLJ 134, *Jegathesan v PP* [1980] 1 MLJ 165, *Dowse v Attorney General, Federation of Malaya* [1961] MLJ 249, *Bhuboni Sadhu v*

King Emperor AIR 1949 PC 257, *Mohamed Ali v PP* [1962] MLJ 230, *Yap Ee Kong & Anor v PP* [1981] 1 MLJ 144, *PP v Paneerselvan & Ors* [1991] 1 MLJ 106 and more recently *PP v Thavanathan* [1994] 2 MLJ 436.

[30] 'In the case of accomplice evidence the need for corroboration arises from the nature of the witness who is somebody who may have an interest in making out the guilt of another in preference to his own (*Din v Public Prosecutor* [1964] MLJ 300 per Thompson CJ). 'The evidence of [an accomplice] ... must be received with the greatest possible caution as it is not unlikely that he would not give untruthful evidence under the circumstances. Therefore the nature and extent of corroboration is relevant' (*Yap Ee Kong & Anor* per Raja Azlan Shah CJ (Malaya), as His Royal Highness then was). 'There may be a case in which a trial court may fittingly convict upon the uncorroborated evidence of an accomplice, but this would be the very exceptional case' (passage from *Rex v Ambler* [1938] 2 WWR 225 and quoted in *Trowell v Public Prosecutor* [1946] MLJ 41, and in *Tengku Mahmood v Public Prosecutor* [1974] 1 MLJ 110). While an appellate court would always hesitate to overrule the decision of a trial judge based upon the demeanour of witnesses whom he had the opportunity of seeing in the witness box, it would nevertheless interfere with the decision if it appeared that he did not give sufficient consideration to the evidence or take into consideration the great number of discrepancies and contradictions in his evidence or test it with the evidence of the other witnesses (*Thong Hong Kee v Public Prosecutor* [1952] MLJ 110).

[31] In the instant case, SP7 gave some details that were supported by other witnesses. Those details include the occupation of the deceased, the debt owed by OKT2 to the deceased, and the daily appearance of the deceased at the clinic. But those details are not probative of the issue, and in any event could well have been within the realm of public knowledge. But reasonably beyond public knowledge and closer to actual knowledge of the crime, SP7 gave certain details — that the right side of the head of the deceased was struck twice and that the deceased was strangled with a green insulated wire — that were consistent with the two wounds on the head of the deceased, and with the green insulated wire around the neck of the deceased. SP7 testified that the deceased was struck twice on the right side of his head, and he was supported by medical evidence of two wounds on the right side of the head of the deceased. SP7 testified that the deceased was strangled with a green insulated wire, and he was supported by evidence of a green insulated wire tied around the neck of the deceased, and of a grove mark around the neck beneath the green insulated wire, which latter fact say that the said green insulated wire was indeed the wire that constricted the neck of the deceased. SP7 testified that the agreed plan was to dispose the body at Genting, and it was established that the *corpus* was located within the environs of the Genting Highlands. No question about it, SP7 gave some details that matched the established facts of the case.

[32] But there was another side to the testimony of 5P7. There were several unexplained material contradictions. The following were those instances. Pressed by the learned DPP to specify his assistance, SP7 said '*saya pegang si mati, di Klinik Ehsan, pada 18, bulan tak ingat, tahun tak ingat, pukul 12.00 tengah malam*'. Then pressed further by the learned DPP to elaborate on the

events on the night in question, SP7 testified that he went to the clinic to collect the loan repayment. OKT2 and the deceased were in the reading room. Both were seated and engaged in conversation, when he entered the reading room. SP7 continued '*Saya terus pergi ke Azman, saya memegang bahu Azman, saya pegang kedua bahu. Kemudian OKT1 masuk dan terus ketuk kepala Azman ... dengan kayu ... Semasa saya masuk ke bilik bacaan, OKT1 ikut belakang. Lepas di ketuk, Azman terus terlintuk, pengsan. OKT1 pukul dua kali. Saya terus keluar. Semasa saya pegang Azman, OKT2 duduk berdepan .... Bahagian kanan kepala si mati dipukul*'. According to SP7 at the initial stage of his examination-in-chief, he went to the clinic to collect loan repayments. His stated purpose at the clinic was to collect loan repayment. But SP7 later testified that the murder plan was revealed on the night of 17 May 2001. According to SP7 at that stage of his examination-in-chief, OKT2 said to him and OKT1 and Haris, that he (SP7) would hold onto the deceased, that OKT1 would strike the head of the deceased with a piece of wood that OKT1 would bring from his (OKT1) house, and that Haris would dispose the body. '*Semasa itu OKT1, OKT2, Haris dan saya berada. OKT2 ada tunjuk wayar hijau. Wayar adalah untuk jerut Azman. OKT2 tidak kata siapa yang akan jerut Azman. OKT2 ada kata buang Azman di Genting*'. SP7 asked the reason for the disposal of the body at Genting. Haris said that the deceased frequented the casino at the Genting Highlands '*dan nanti orang ingat dia kena rompak*'. In other words, it was the testimony of SP7 that all four *particeps* (OKT1, OKT2, Haris and SP7) were present in the same time when the plan was revealed on 17 May 1999. It was the testimony of SP7 that OKT2 and deceased were in the reading room when he arrived at the clinic, and that Haris only arrived at the clinic after the deceased had been struck on the head. The net effect of that testimony was that the four *particeps* disbanded after the plan had been revealed and agreed upon. In that case, when SP7 went to the clinic at and or about the time of the alleged murder, SP7 could not have gone to the clinic with the intention to collect loan repayments. The murder plan had been settled, and SP7 must have gone to the clinic to partake in murder.

[33] According to SP7, '*Semasa itu OKT1, OKT2, Haris dan saya berada*' on the occasion when OKT2 revealed his evil plan. Then reasonably, on that occasion, all four alleged *particeps* would have been acquainted with one another. Whatever the case, all four alleged *particeps* could not have disbanded as strangers after the plan was revealed, even if that were the case before. Yet SP7 testified that before the incident he did not know ('*tidak kena*') Haris, and that OKT2 introduced Haris to him (the effect of SP7's evidence) after the deceased had been struck on the head — '*Haris Fadzilah arrived at the clinic. OKT2 memperkenalkan Haris kepada saya ... Saya tidak kena Haris sebelum kejadian ... Haris terus masuk ke bilik bacaan ... beberapa minit Haris keluar daam keadaan tergesa-gesa dari bilik bacaan ... Lepas itu Haris keluar ke pintu hadapan klinik [dan] alihkan motorsikal di luar klinik*'.

[34] There were also certain aspects of the testimony of SP7 that aroused scepticism as well as suspicion. SP7 could relate, with meticulous detail, on the movements in and out of the reading room after the deceased had been struck on his head. If SP7 had such an observant eye, then how could there

be the following lapses. SP7 did not see any green wire around the neck of the deceased as he lifted the deceased into car BCE 8313. And SP7 failed to relate how it came about to be upon Haris to strangle the deceased. SP7 related that OKT2 had agreed to pay him RM200,000 for his 'assistance', but yet walked nonchalantly away from the clinic, with just a paltry RM1,000 and two cheques of RM500 each, and without any promise from OKT2 for payment of the rest. SP7 had just participated in a capital offence. Given that he had just stuck his neck out, could SP7 have just walked away from the scene without immediate payment from OKT2? And could it be believed that SP7 would have believed the promise of OKT2 to him? SP7 testified that OKT2 was indebted to his company in the sum of RM40,000, and that each night he would collect a sum of RM100 from OKT2, towards repayment of what to a medical practitioner should not be a princely sum. Given so, SP7 should know that OKT2 was in serious financial trouble. So, could SP7 have believed the promise of OKT2 to pay him RM200,000? SP7 testified that he was asked to participate in a capital offence. SP7 should know that he could face the most severe penalty if he were caught. SP7 should know that that RM200,000 would not be easy to collect and even if paid would probably extend over a very long period, thereby tying him indefinitely to OKT2 and to the attendant risk ever increasing of being discovered. At the same time, without being paid, SP7 could not take flight. So could it therefore be believed that SP7 would jump in head first without first being paid? Suffice it to say that the story that OKT2 promised and SP7 agreed to accept RM200,000 to assist in the killing of the deceased came across as rather incredulous.

[35] The story of SP7 had holes. Yet there was a total failure to adduce evidence to buttress and or support the story of SP7, on the several aspects that could be buttressed and or supported. SP7 testified that the deceased Wore a '*baju sejuk*'. SP17 could testify that the deceased had a '*baju sejuk*'. SP7 testified that he cashed a one of the two cheques. The bank could produce the banking statements. SP7 testified that all four *particeps* met in the reading room on the night of 17 May 1999. SP13, Siti Khatijah and or Suhaimi could testify that all four *particeps* were in the clinic at some point in time on the night of 17 May 1999. SP7 testified that OKT2 asked SP13, Siti Khatijah and Suhaimi to buy food and that OKT2 asked SP13, Siti Khatijah and Suhaimi upon their return to the clinic, to go home. SP13, Siti Khatijah and or Suhaimi could confirm that aspect of the prosecution story. But SP13 was not even asked a single question on that material aspect. True, SP13 could not remember if she was at work on the night of 17 May 2001. But if OKT2 had said to SP13, Siti Khatijah and Suhaimi '*ada hal keluarga dan dia hendak tutup klinik dengan cepat*', and SP13, Siti Khatijah and Suhaimi had returned home early, then surely that event could be confirmed by SP13, Siti Khatijah or Suhaimi, But SP13 was not even examined on that event, as if, it would seem, it had not happened. So could it therefore be believed that murder was committed at the very moment when SP13, Siti Khatijah and or Suhaimi, if not SP14, were in the clinic? Could it therefore be believed that the plan was to murder in the clinic and at a time when SP13, Siti Khatijah and or Suhaimi would be around and or patients could be around to witness the foul act? Could it be believed that the plan could be that rash? The clinic was clean as a whistle.

BCE 8313 was also devoid of all incriminating evidence. Perhaps BCE 8313 would not be that clean, had there been a comparison of the strands of hair recovered from BCE 8313 with the hair sample taken from the *corpus* of the deceased. A positive match would identify BCE 8313 as a car that the deceased, be it dead or alive, could have been inside, at some point in time. Unfortunately, no such comparison was done, with the result that there was no evidence to connect the car BCE 8318 to the crime and or to support the story of SP7 that BCE 8313 was the car that droved away with the body of the deceased. At the end of it all, SP7's story was left to stand alone, and very much on its own.

[36] There was some independent corroboration of SP7's story that Haris was involved. As a matter of fact, SP7 testified that it was Haris who strangled the deceased. SP17 testified that the deceased was riding off on JGB 5288 when she last saw him. On 24 May 2001, the police recovered JGB 5288 from 406, Jalan Merpati, Kg Kenangan, Muar, from one Hair Anuar bin Buhari. On 12 July 2001, the police took possession of BCE 8313 parked in front of 406, Jalan Merpati, Kg. Kenangan, Muar. BCE 8313 was registered in the name of the father of Haris. Put together, it could be argued that JGB 5288 was recovered from a house connected to Haris, and it could be further argued that recovery of JGB 5288 within a few days of the murder from a house connected to Haris, was clear circumstantial evidence implicating Haris. SP7 had some independent circumstantial evidence supporting his story that Haris was *particep*. But if Haris and or Hair were involved, then why were they released, notwithstanding the fact that the motor scooter used by the deceased when last seen alive was recovered from them and or from their house? The court could only guess at the reason. And the court is still guessing at the truth of the story of SP7. For there was not any additional evidence rendering it probable that the story of SP7 is true and that it is safe to act upon it. That OKT2 was beholden to the deceased, and that the deceased had some hold on OKT2 is also beyond doubt. That the deceased was murdered is also beyond doubt. The prosecution established that there was a possible motive on the part of OKT2 to be rid of the deceased. The prosecution also showed that OKT2 was a reasonable suspect. But suspicion alone is not enough (*Ng Yiu Kwok and Ors v Public Prosecutor* [1989] 3 MLJ 166). There must be credible evidence sufficient to convict. It must be borne in mind that the entire case of the prosecution hangs on the story of a self-confessed hired killer. That story was not free from material contradictions. That story was also not entirely credible. Given that OKT1 and OKT2 could face the ultimate punishment, would it not only be prudent to demand some independent evidence confirming in some material particular that OKT1 and OKT2 committed the crime in the circumstances said by SP7, or some independent evidence tending to connect OKT1 and OKT2 to the actual crime? Some forensic evidence could tip the scales. But there was only circumstantial evidence of a possible motive on the part of OKT2 but not that he did it in the circumstances said by SP7. The long and short of it is that SP7's story was not corroborated in all material particulars, except on the possible involvement of Haris, on the injuries, and on the cause of death. Admittedly, in connection with the injuries, the green insulated wire, and the cause of death, it would be argued that SP7 must have had direct knowledge of the crime. Even so,

it remains that there was no independent evidence confirming in some material particular that OKT1 and OKT2 committed the crime, and that there was no independent evidence tending to connect OKT1 and OKT2 to the crime. Given the totality of the facts and circumstances of the case, it could not be said that this is one of those rare cases where it is safe to convict on the uncorroborated evidence of an accomplice. The court could not convict, even if OKT1 and OKT2 were to remain silent. There is no prima facie case. Both accused are therefore acquitted and discharged.

Accused acquitted and discharged.

Reported by Mariette Peters-Goh